REMARKS

Claims 1, 17, 18, and 29 have been amended. Claims 1-36 will be pending after entry of the instant amendment. No new matter has been added.

I. Rejections under 35 U.S.C. §112, Second Paragraph

Claims 1-36 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A. The examiner alleges that claims 1, 18, and 29 are incomplete for failing to recite a recovery step and states that there is no specific rule or statutory requirement that mandates the need for a recovery step in a process of preparing a composition. Applicant has amended claims 1, 18, and 29 to recite a recovery step in the interest of expediting prosecution. Accordingly, Applicant respectfully requests that this rejection of claims 1, 18, and 29, and dependent claims 2-17 and 19-28, be withdrawn.

B. The examiner alleges that claims 1, 18, and 29 are indefinite for failing to teach or recite the meaning of the phrase "sufficient water." Applicant respectfully traverses the rejection.

As stated in MPEP § 22173.02, the examiner's focus should be on whether the claims meet the threshold requirements of clarity and precision. When the patentable subject matter is disclosed, and the claims are directed to the patentable subject matter, the examiner...

> "...should allow claims which define the patentable subject matter with a reasonable degree of particularity and distinctness. Some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire."

The MPEP goes on to further state:

> "The essential inquiry pertaining to this requirement is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. Definiteness of claim language must be analyzed, not in a vacuum, but in light of:
>
> (A) The content of the particular application disclosure;
>
> (B) The teachings of the prior art; and

(C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent at the time the invention was made." (emphasis added)

With regard to (A) and (C), the application teaches throughout the specification that an amount of water is needed for the reaction. This is not a feature of the invention that requires a detailed teaching for practicing the invention: one of skill would easily recognize, as did the Applicant in preparing the specification, that determining the scope of "a sufficient amount of water" to include in the claimed reaction is a mundane laboratory exercise. With regard to (A), (B), and (C) one of skill would recognize that the amount of water required in the reaction mixture should be unique to the system chosen, and this fact is exemplified, for example, in Haas et al., Journal of the American Oil Chemists Society 72(5):519-25(1995)("Haas"), which has been cited against this application in the present Office Action. Although Haas was published after the filing date of the present invention, Haas cited to an earlier article for proof that this concept is well-known to those of skill. See Ibid, citing Haas et al, 71:483(1994). The Applicant, in fact, listed Haas in the "REFERENCES" section of the present application at paragraph [0011] and discussed it in more detail, for example, at paragraph [0074]. Haas, at page 523 and Figs 2A and 2B, makes it clear that the water requirements are unique to each chosen system and provides a simple example of how to easily select "a sufficient amount of water" to include in the claimed reaction.

As such, the Applicant has recognized the variability in the amount of water required, knows that the selection of the amount of water to be used is a mundane exercise, and, thus teaches what is necessary to practice the claimed invention. The specification teaches, for example at paragraph [0051], that the amount of water merely needs to be sufficient for "hydrolysis to occur" and "Preferably, the water content is at a level effective to promote hydrolysis and minimize transesterification." Further, the specification teaches in the same paragraph that, for example, "This water may be added to the reaction medium, e.g. by using a water saturated solvent, or it may be provided by entrapped or residual water in the lecithin starting material." In view of the foregoing, the content of the particular application disclosure; the teachings of the prior art; and the claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent at the time the invention was made all support that the claims define the patentable subject matter with a reasonable degree of

particularity and distinctness, even though the claim language is not as precise as the examiner might desire. Accordingly, Applicant respectfully requests that this rejection of claims 1, 18, and 29, and dependent claims 2-17 and 19-28, be withdrawn for at least these reasons.

C. The examiner alleges that claims 11, 25, and 31 are indefinite for reciting that the lecithin material is a retentate from a vegetable oil membrane degumming process. Applicant respectfully traverses the rejection.

The examiner cites to Paulitz et al (US Pat. No. 4,584,141) for the definition of "degumming" and for the premise that a retentate from the vegetable oil membrane degumming process would comprise phosphatides but would not comprise triglycerides, as required by the claims. As shown in Paulitz, which is directed to concentrating triglyceride oil as a valuable raw material, a problem with degumming process is the loss of triglycerides due to an **incomplete** separation. See Paulitz, col. 2, lns 50-54.

One of skill will appreciate that **degumming processes are not 100% efficient separations** – and, to get a high efficiency of separation, repetitive refining is used. The present invention is directed to concentrating the phospholipids portion of the crude oil and cites to Jurjis et al (US Pat. No. 6,207,209) for a teaching of such a membrane degumming process, which has a permeate stream that flows through the membrane and a retentate stream that does not flow through the membrane. Jurjis teaches at col. 5, lns 21-28, that its permeate stream includes a decreased phospholipids concentration and vegetable oil, which is defined as a mixed glyceride oil by the Environmental Protection Agency at http://iaspub.epa.gov/trs/trs_proc_qry.navigate_term?p_term_id=27363&p_term_cd=TERMDIS. The retentate stream includes an increased phospholipids concentration and vegetable oil. As such, both streams in the process used in the present invention includes triglycerides.

The membrane degumming process that is taught in the present application merely concentrates the lecithin material with phospholipids without removing all the tryglycerides, and, therefore, meets the limitations for use in the claims. Accordingly, Applicant respectfully requests that this rejection of claims 11, 25, and 31 be withdrawn for at least these reasons.

D. Claim 17 stands rejected for being self-dependent. Applicant has amended claim 17 for proper dependency and respectfully requests that the rejection be withdrawn.

II. Rejections under 35 U.S.C. §102(b)

Claims 29, 30, and 32 stand rejected under 35 U.S.C. §102(b) as being anticipated by Haas et al., Journal of the American Oil Chemists Society 72(5):519-25(1995)("Haas"). Since Haas was published after the filing date of the present application, Haas is not prior art. Accordingly, Applicant respectfully requests that this rejection of claims 29, 30, and 32 be withdrawn.

III. Rejections under 35 U.S.C. §103(a)

Claims 29, 30, 32, 33, 35, and 36 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Haas et al., Journal of the American Oil Chemists Society 72(5):519-25(1995)("Haas"). As described above, since Haas was published after the filing date of the present application, Haas is not prior art. Accordingly, Applicant respectfully requests that this rejection of claims 29, 30, 32, 33, 35, and 36 be withdrawn.

IV. Conclusion

In view of the foregoing, Applicant submits that the claims are now in condition for allowance. A Notice of Allowance is, therefore, respectfully requested.

No further fees are believed due with this communication. However, the Commissioner is hereby authorized and requested to charge any deficiency in fees herein to Deposit Account No. 50-2207. If in the opinion of the Examiner a telephone conference would expedite the prosecution of the subject application, the Examiner is encouraged to call the undersigned at (650) 838-4388.

Respectfully submitted,

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Brian S. Boyer, Ph.D.
Registration No. 52,643

Correspondence Address:
CUSTOMER NUMBER 22918
PHONE: (650) 838-4388
Fax: (650) 838-4588